

DEC 17 11 20 AM '96
Federal Communications Commission
Washington, D.C. 20554
DISPATCHED BY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 96-250
Table of Allotments,)	RM-8952
FM Broadcast Stations.)	
(Parris Island and Hampton, South Carolina))	

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: December 6, 1996;

Released: December 13, 1996

Comment Date: February 3, 1997

Reply Comment Date: February 18, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Simmons Broadcasting Company ("petitioner"), licensee of Station WLWS(FM), Channel 221A, Parris Island, South Carolina, proposing the substitution of Channel 276C3 for Channel 221A at Parris Island, and the modification of Station WLWS(FM)'s license accordingly. To accommodate the upgrade, petitioner also proposes the substitution of Channel 221A for Channel 276A at Hampton, South Carolina, and the modification of Station WBHC-FM's license accordingly. Petitioner states its intention to apply for the channel, if allotted.

2. In support of its proposal, petitioner asserts that the proposed upgrade would serve the public interest by allowing Station WLWS(FM) to increase its area coverage by 52% and its population coverage by 43%. Likewise, the substitution of Channel 221A at Hampton would allow Station WBHC-FM to increase its area coverage by 67% and its population coverage by 73%. Under the proposal, petitioner asserts that both stations would be able to offer more range and quality of service to more people. Petitioner further asserts that the proposed channel swap with Station WBHC-FM is necessary to effectuate the channel upgrade at Parris Island. Therefore, petitioner contends that the proposed channel substitutions constitute an "incompatible channel swap" and should be protected from competing expressions of interest consistent with the adjacent channel upgrade provisions of Section 1.420(g)(3) of the Commission's Rules. Section 1.420(g)(3) allows the modification of a station's license to a higher class channel if the

channel is a co-channel or adjacent channel mutually exclusive with the existing license. However, the Commission has acknowledged that it will consider analogous proposals involving channel substitutions at other communities which would be necessary to create a mutually exclusive relationship required under Section 1.420(g)(3), and has determined to consider these "incompatible channel swaps" on a case-by-case basis. See Modification of FM Broadcast Licenses to Higher Class Co-Channel or Adjacent Channels, 60 RR 2d 114 (1986).

3. We believe the proposal warrants consideration since it would enable Station WLWS(FM) to expand its coverage area and improve its service. An engineering analysis has determined that Channel 276C3 can be allotted to Parris Island in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site.¹ Additionally, Channel 221A can be allotted to Hampton in compliance with the Commission's minimum distance separation requirements at its presently authorized site.² In accordance with Section 1.420(g)(3) of the Commission's Rules, any party expressing an interest in the respective channels should demonstrate why this proposal is not an "incompatible channel swap" such that its expression of interest is foreclosed.

4. Whenever an existing station is ordered to switch frequency in order to accommodate a new allotment, we require that the proponent of the new allotment make a commitment that it would reimburse the affected station for the costs incurred in changing frequency. Accordingly, if the channel substitution at Hampton is ultimately adopted, the licensee of Station WBHC-FM is entitled to reimbursement for the reasonable cost involved in changing its frequency. See Circleville, Ohio, 8 FCC 2d 159 (1967). Petitioner has stated its willingness to reimburse Station WBCH-FM for the reasonable and customary expenses incurred in changing to Channel 221A.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Parris Island, South Carolina	221A	276C3
Hampton, South Carolina	276A	221A

¹The coordinates for Channel 276C3 at Parris Island are North Latitude 32-27-00 and West Longitude 80-47-30.

²The coordinates for Channel 221A at Hampton are North Latitude 32-50-39 and West Longitude 81-07-28.

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Hampton County Broadcasting, licensee of Station WBHC-FM, Hampton, South Carolina, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 221A in lieu of 276A.

7. Pursuant to Section 1.87 of the Commission's Rules, Hampton County Broadcasting may, not later than February 3, 1997, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Hampton County Broadcasting to furnish additional information. If Hampton County Broadcasting raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Hampton County Broadcasting will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the following:

Hampton County Broadcasting
P.O. Box 666
Hampton, South Carolina 29924
(Licensee of Station WBHC-FM)

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before February 3, 1997, and reply comments on or before February 18, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Michelle A. McClure
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200

Washington, D.C. 20036-3101
(Counsel for Petitioner)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

MM Docket No. 96-250
RM-8952

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making and Order to Show Cause to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the

person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.